

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

MARIA G. DAVILA-MARQUEZ and )  
 ERNESTO MARQUEZ, wife and husband, )

Plaintiffs, )

vs. )

CITY OF PASCO, a municipal corporation; )  
 and RYAN FLANAGAN and JANE DOE )  
 FLANAGAN, husband and wife, and )  
 ZACHARY FAIRLEY and JANE DOE )  
 FAIRLEY, husband and wife, and )  
 ROBERT METZGER, Chief of Police of )  
 the Pasco Police Department, )

Defendants. )

NO. CV-12-5059-LRS

ORDER RE DEFENDANTS'  
 MOTION FOR PARTIAL  
 SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Partial Summary  
 Judgment, ECF No. 15, filed on January 10, 2013 and noted for March 4, 2013,  
 without oral argument. Plaintiffs Maria G. Davila-Marquez and Ernesto  
 Marquez, oppose the motion. After careful review of the pleadings, exhibits, and  
 declarations submitted by both parties, the Court finds that there are no genuine

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1 issues of material fact for the two discrete issues before the Court, and Defendants  
2 are entitled to partial summary judgment as a matter of law for the reasons set forth  
3 below.  
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5 **A. Duty To Provide Spanish Interpreter**  
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7 Plaintiff Maria G. Davila-Marquez and her husband Ernesto sue Pasco  
8 Police Officers Ryan Flanagan and Zachary Fairley as the result of her detainment  
9 by the officers on May 21, 2009. Plaintiff Davila-Marquez also sues Pasco Police  
10 Chief Robert Metzger and the City of Pasco.  
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12 Among other claims, Plaintiffs allege that the officers lacked probable cause  
13 to detain Maria Davila-Marquez and the officers used unreasonable force when  
14 detaining her. Probable cause and the use of unreasonable force are not issues  
15 before the Court for purposes of this partial summary judgment motion.  
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18 Plaintiffs argue that Defendant Officers Flanagan and Fairley should have  
19 retrieved a Spanish-speaking officer for Maria Davila-Marquez, when detaining  
20 her, in order to assist in interpreting for her. Defendants request that the Court  
21 enter a partial summary judgment order declaring that they had no obligation to  
22 bring to the scene of Plaintiff's arrest a Spanish speaking officer nor during any of  
23 Plaintiff Davila-Marquez's initial contact with law enforcement officers, provide  
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1 Plaintiff Davila-Marquez a Spanish interpreter.

2 Citing decisions from various state and federal jurisdictions, including the  
3 Ninth Circuit, Defendants assert that courts have consistently held that law  
4 enforcement agencies need not provide foreign language interpreters, including  
5 Spanish-speaking translators, when a non-English speaking citizen encounters or is  
6 arrested by a law enforcement officer. (ECF No. 17 at 3-11). Additionally, in  
7 other contexts, Defendants note the Ninth Circuit has found that Spanish speaking  
8 citizens are not denied equal protection and due process where the state  
9 administered its unemployment insurance benefits program only in English.  
10 *Carmona v. Sheffield*, 475 F.2d 738 (9th Cir.1973).

11 Plaintiff, in opposition to the Defendants' motion, suggests that part of the  
12 officers' so-called "probable cause" to arrest was their inability to understand the  
13 information Plaintiff Davila-Marquez was providing in response to their  
14 interrogation. Plaintiffs allege that the officers believed that Ms. Davila-Marquez  
15 was providing false or misleading information. Plaintiffs argue that the Defendant  
16 Officers ignored, dismissed, or ridiculed Plaintiff Davila-Marquez' pleas for a  
17 Spanish speaking officer to assist and that that they illegally detained her.

18 Defendants deny those facts but for purposes of their summary judgment motion,

19 ORDER - 3  
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1 concede Plaintiffs' version of the facts that the officers did not summon a Spanish  
2 speaking officer to assist after Plaintiffs' request for assistance.  
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4 Plaintiffs' position relies on the theory that because Defendant City of  
5 Pasco has been the recipient of several federal Justice Assistance Grants (JAG) and  
6 other federal grant funds, it is obligated to comply with federal directives to  
7 provide services to Limited English Proficient (LEP) persons. Plaintiff adds the  
8 Executive Order No. 13166, 65 Fed. Reg. 50,121 (Aug. 15, 2000) requires federal  
9 agencies and recipients of federal funding to provide meaningful access to LEP  
10 persons.  
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13 Plaintiffs' assert that based upon information and belief (because discovery  
14 is not completed) the City of Pasco failed to comply with federal regulations in  
15 formulating service programs to LEP persons despite clear directives to do so.  
16 Plaintiffs further argue that there is nothing in the training manuals formulated by  
17 the City of Pasco and Pasco Police Department addressing the provisions of  
18 services to LEP persons, including suspects.  
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22 The Court finds Plaintiffs' argument unpersuasive. The Department of  
23 Justice's "Guidance to Federal Financial Assistance Recipients Regarding Title VI  
24 Prohibition Against National Origin Discrimination Affecting Limited English  
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1 Proficient Person,” (“Guidance”)<sup>1</sup> is a guide, without the force of law.  
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3 Additionally, DOJ’s “Guidance” document does not create a private cause of  
4 action. Because of the flexible approach to securing compliance with Title VI as  
5 mandated by Exec. Order 13,166, even small steps toward compliance will show a  
6 good faith effort to comply. See “Guidance” document, ECF No. 23-2 at 15.  
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8 In *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001), the Court held that in  
9 order to prove national-origin discrimination under Title VI of the Civil Rights Act  
10 of 1964, a plaintiff must show that an agency receiving federal funds acted with  
11 discriminatory intent in failing to provide services in another language. The *Moua*  
12 *v. City of Chico*, 324 F. Supp. 2d 1132 (E.D. Cal. 2004) case, however, illustrates  
13 the difficulty of proving intent in cases dealing with alleged unequal provision of  
14 police services.  
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18 Defendants represent that Pasco Police Department employs 12 Spanish  
19 speaking police officers. Defendant Officers Flanagan and Fairley, who  
20 encountered Plaintiff, do not speak Spanish. It could be viewed that the Pasco  
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23 <sup>1</sup>See Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title  
24 VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67  
25 Fed. Reg. 41,455, 41,458 (June 18, 2002).  
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1 Police Department, by employing 12 Spanish speaking officers, has taken  
2 reasonable steps to ensure meaningful access to their programs and activities by  
3 LEP persons, considering the average yearly grant is in the range of \$12,543 -  
4 \$22,068. ECF No. 23-3.  
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7 Finally, federal case law is lacking to support the notion that a person  
8 has a federally protected right to an interpreter when initially confronted by police.  
9 Federal courts have, however, implicated a Sixth Amendment right to translation in  
10 the courtroom, for example:  
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12 The right to confrontation, for a defendant unable to understand the  
13 language of the court and the witnesses, requires simultaneous  
14 translation for the purpose of communicating with counsel to enable  
15 the latter to effectively cross-examine witnesses to test their  
16 credibility, their memory and their accuracy of observation.

17 *Giraldo-Rincon v. Dugger*, 707 F.Supp. 504, 506 (M.D.Fla.1989) (citing  
18 *United States of America v. The State of New York*, 434 F.2d 386 (2nd Cir.1970)).  
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20 The federal cases hold that the right to an interpreter affects a defendant's Sixth  
21 Amendment right of confrontation and the right inherent in a fair trial to be present  
22 at one's own trial. See *United States ex rel. Negron v. State of New York*, 434 F.2d  
23 386, 389 (2nd Cir.1970). Washington also provides by statute that when an  
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1 impaired person is a party to any legal proceeding the judge shall, in the absence of  
2 a written waiver, appoint a qualified interpreter. RCW 2.42.020.  
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4 The Court Interpreters Act of 1978,<sup>2</sup> while underscoring the importance of  
5 ensuring the highest quality translations for non-English speaking defendants, does  
6 not create new constitutional rights for defendants or expand existing constitutional  
7 safeguards. See *United States v. Tapia*, 631 F.2d 1207, 1209–10 (5th Cir.1980).  
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9 Notwithstanding the foregoing, the Court makes no judgment as to the use of  
10 or the effect of evidence of language difficulties or the lack of an interpreter for  
11 other aspects of Plaintiffs' case.  
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13 **B. Dismissal of Claims Against Defendant Robert Metzger**  
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15 Defendant Pasco Police Chief Robert Metzger seeks dismissal of all claims  
16 against him, since he did not serve as Chief of Police until May 2011, two years  
17 after the event about which plaintiffs complain. The Court finds that due to lack of  
18 personal involvement of Defendant Metzger in any conduct alleged to have  
19 violated Plaintiff's constitutional rights, he must be dismissed from this action.  
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22 **IT IS HEREBY ORDERED** that:

23 1. Defendants' Motion for Partial Summary Judgment, **ECF No. 15**, filed on  
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25 <sup>2</sup>28 U.S.C. § 1827.  
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1 January 10, 2013 is **GRANTED**.

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3 2. All claims against Defendant Robert Meztger are dismissed with  
4 prejudice.

5 The District Court Executive is directed to enter this Order, enter judgment  
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7 consistent with this order, and provide a copy to counsel.

8 DATED this 18th day of March, 2013.

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10 *s/Lonny R. Suko*

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12 LONNY R. SUKO  
13 U.S. District Court Judge  
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